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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,486	05/18/2005	John McGuire	MCGJ101NUS	2842
21658	7590	12/04/2006	EXAMINER	
DYKAS, SHAVER & NIPPER, LLP P.O. BOX 877 BOISE, ID 83701-0877			DUCKWORTH, BRADLEY	
			ART UNIT	PAPER NUMBER

3632

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/516,486

Applicant(s)

MCGUIRE, JOHN

Examiner

Bradley H. Duckworth

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/31/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to because the second component in figure 6 is erroneously labeled 5 instead of 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the magnetic sensor or detector as detailed in paragraph 2 on page 8, as well as in the claims, must be shown

or the feature(s) canceled from the claim(s). No new matter should be entered. Also the reference character 18 appears in this paragraph but not in the figures.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

Art Unit: 3632

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet). **(not included)**
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities: The disclosure is not in the preferred format as detailed above. Also there are a few typos, first on page 7 line 16 the words component may should be components may. Second on page 11 line 12 the word activated should be activated. Third on page 12 line 11 the word attend should be attend.

Appropriate correction is required.

Claim Objections

Claims 1,2,4,16,17,18, and 19 are objected to because of the following informalities: The medical bag was not claimed in claim 1, or any of the depending claims, as such it was treated as an intended use statement, which is afforded little or

no patentable weight in as much as the device must be capable of performing such a function. Appropriate correction is required.

Claim 3 is objected to because of the following informalities: The term tubulars is unclear and not commonly used in the art, therefore the tubulars were interpreted as tubular sections, i.e. in the shape of a tube, or being tubular in shape. Appropriate correction is required.

Claim 9 is objected to because of the following informalities: Claim 9 is improperly dependent on claim 12, for the purposes of examination it was assumed that claim 9 depended from claim 1. Appropriate correction is required.

Claims 18 and 19 are objected to because of the following informalities: as written the claims do not claim the magnetic sensor or detector and magnetic array as part of the claimed invention. However since it was believed by the examiner to be a part of the claimed invention, based on the preceding claims and the specification, the claims were examined as if they did positively claim the magnetic sensor and array. Appropriate correction is required.

Claims 14, 16 and 17 are objected to because of the following informalities: The all refer to "the magnetic detector and the magnetic array" as well as depend from claim 1. There is no magnetic detector or array mentioned in claim 1, therefore it is unclear what magnetic detector or array is referred to. For the purposes of examination it was assumed that the claims depended from claim 12. Appropriate correction is required.

Art Unit: 3632

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-14, and 16-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The magnetic sensor or detector described in the claims is not shown in the figures or adequately described in the disclosure to enable one of ordinary skill in the art to which it pertains to make or use the device without undue experimentation. The sensor is not shown and from the disclosure it is not clear how the sensor is structurally arranged or how the sensor interacts with the magnetic array.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

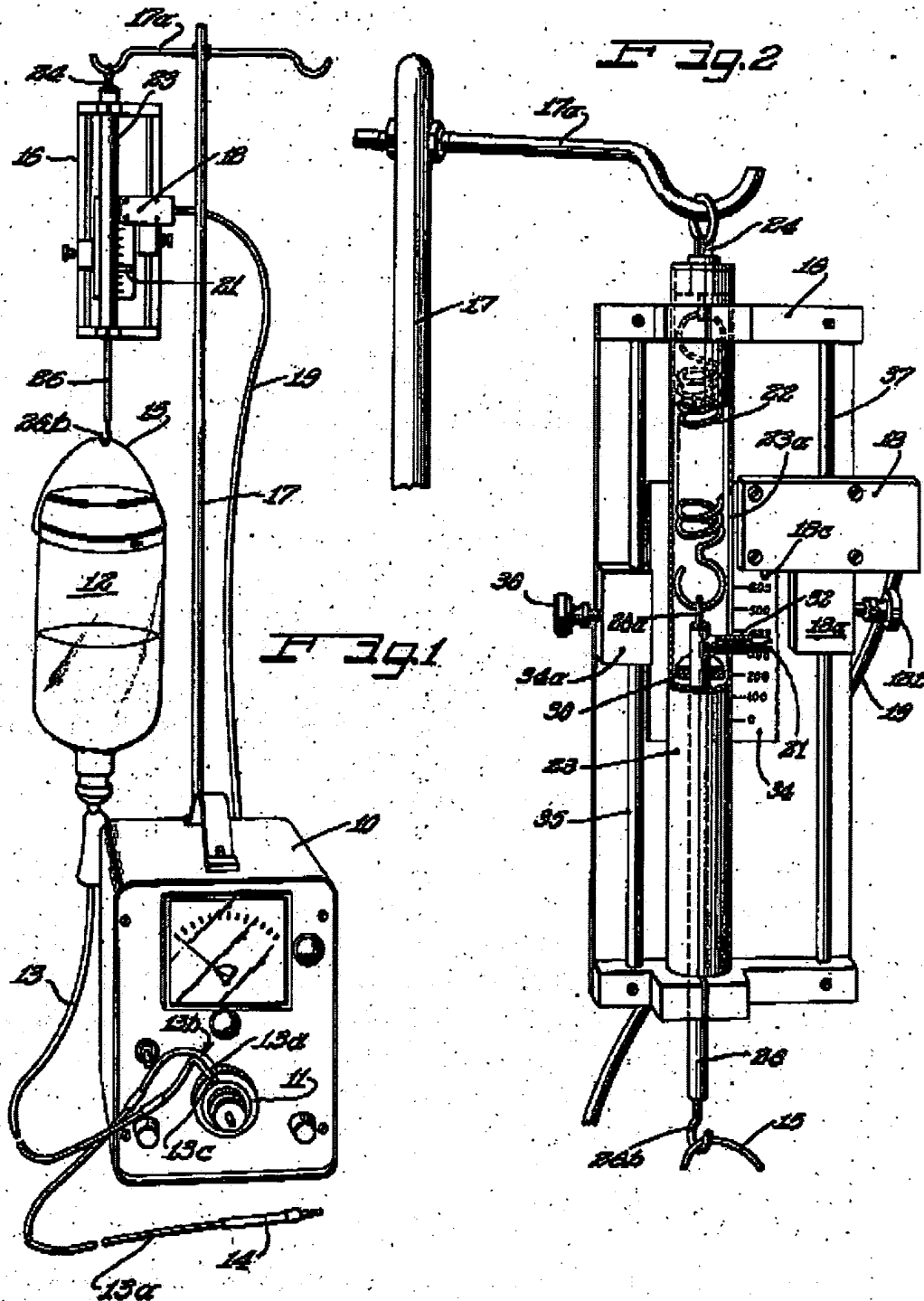
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon et al.(US003425415). Gordon teaches a controlled infusion system, referring to figures 1 and 2, comprising an indicator means(34), a first component with attachment means (26B) for a drip bag, that can move relative to a second component(17) in a substantially vertical direction, whereby movement of the first component activates the

Art Unit: 3632

indicator means, further comprising a third tubular (23) where the indicator means are on the third component.

Art Unit: 3632



Claims 1,2,3,4,5,6,7,10,11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Vancaillie et. Al.(US005956130). Referring to figure 1, Vancaillie teaches a stand, comprising indicator means(67) a first component(70) with attachment means for a medical bag(50) and is adapted to move in a substantially vertical direction relative to a second component(74) where the movement of the first component activates the indicator means, the two components comprising hollow tubular sections, where the first component is positioned above and substantially within the top of the second section, where the lower region of the first section has a diameter smaller then that of the diameter of the uppermost section of the second component. The stand further comprising a compression spring(91) located in the second component where the first component makes contact with and sits on the compression spring. The indicator means mentioned above, in the embodiment of figure 1, comprise a means to measure the weight induced compression of the spring(91) whereby the means sends a signal to a computing means which activates either one or more of an indicator light or audible alarm, as detailed in the first paragraph of column 21 among other places, when the spring either compresses(weight added, i.e. medical bag filling) or extends(weight lost, i.e. medical bag emptying) past a predetermined point.

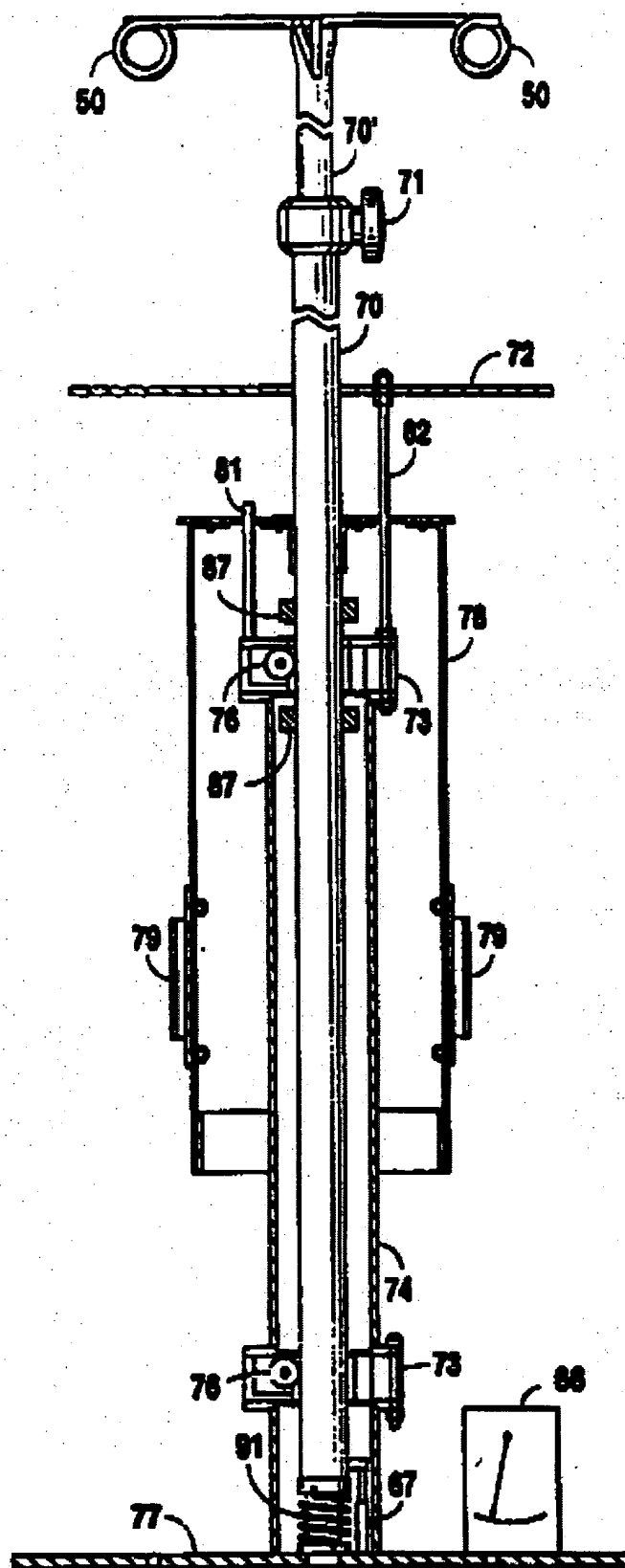


Fig. 1

Art Unit: 3632

Claims 1,8 and 9 rejected under 35 U.S.C. 102(b) as being anticipated by Vancaillie. Vancaillie teaches another embodiment of a stand, as shown in figure 4, comprising an indicator means(here 64,51, and 67) where movement of a first component, taken as rod(70) upto load cell(64) including casing(78) and means to hold a medical bag(50), relative to a second component(74), whereby the lowermost region of the first component(78) is substantially over the uppermost region of the second component, where the diameter of the lowermost region of the first component is larger than the diameter of the uppermost region of the second component.

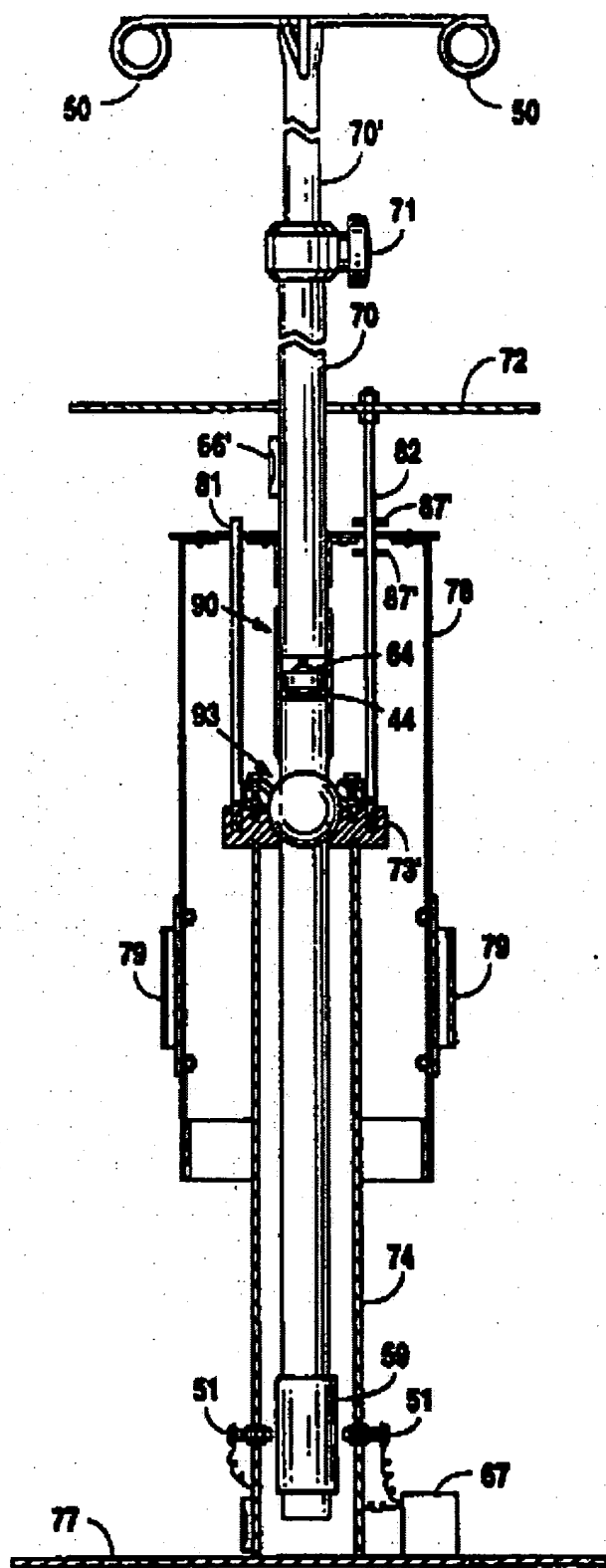


Fig. 4

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12,13,14,16,17,18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vancaillie as applied to claims 1 and 15 above, further in view of Ferrand et al.(US005906016) further in view of www.alliedelec.com, specific pages listed below. As detailed above Vancaillie teaches a stand with means to measure the relative motion of the first component to the second component, when either weight is added or subtracted to the first component, as well as teaching a means to select a predetermined point for maximum spring compression or expansion, where motion past this point would activate an alarm or indicator lights. The means of Vancaillie comprises a computing means, load cells, and a linear variable differential transformer to measure the compression of spring(91). However Vancaillie does not teach the use of a magnetic array and a reed switch as a part of the indicator means. Ferrand teaches a patient care

system comprising a telescoping rod assembly as shown in figures 81 and 82. The rod assembly is equipped with a magnetic array (1124) and a reed switch(1126) with the magnetic array on a first component(1102) and the reed switch on a second component(1106), and a spring (1122) on the second component with the first component resting thereon, where the magnetic array in proximity of the reed switch activates an alarm as detailed in paragraphs 141, 251 and 252 of the disclosure.

Further it is known that reed switches and magnets such as the ones shown described are substantially less costly then load cells and linear variable differential transducers, with reed switches and magnets costing a few dollars

(<http://www.alliedelec.com/Search/SearchResults.asp?N=0&Ntk=Primary&Ntt=reed%20switch&Source=google&sid=455CFB802E0E17F>), as shown here, and load cells and linear transducers costing several hundred dollars, as shown here from the same vendor

(<http://www.alliedelec.com/Search/SearchResults.asp?N=0&Ntk=Primary&Ntt=linear+transducer&sid=455CFB802D21617F>),

<http://www.alliedelec.com/Search/SearchResults.asp?N=0&Ntt=load+cell&Ntk=Primary&i=0&sid=455CFB807EC7617F>. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to replace the linear transducers and load cells of Vancaillie with reed switches and magnetic arrays as shown by Ferrand, in order to create a indicator system that would have the same basic functionality, in that indicator lights or an alarm could be activated by computing means when the magnetic array neared the reed switch as weight was either applied or taken off of the first

Art Unit: 3632

component, such as when a medical bag filled or empties respectively, because not only would this system provide the same basic functionality disclosed by Vancaillie it would be significantly less costly.

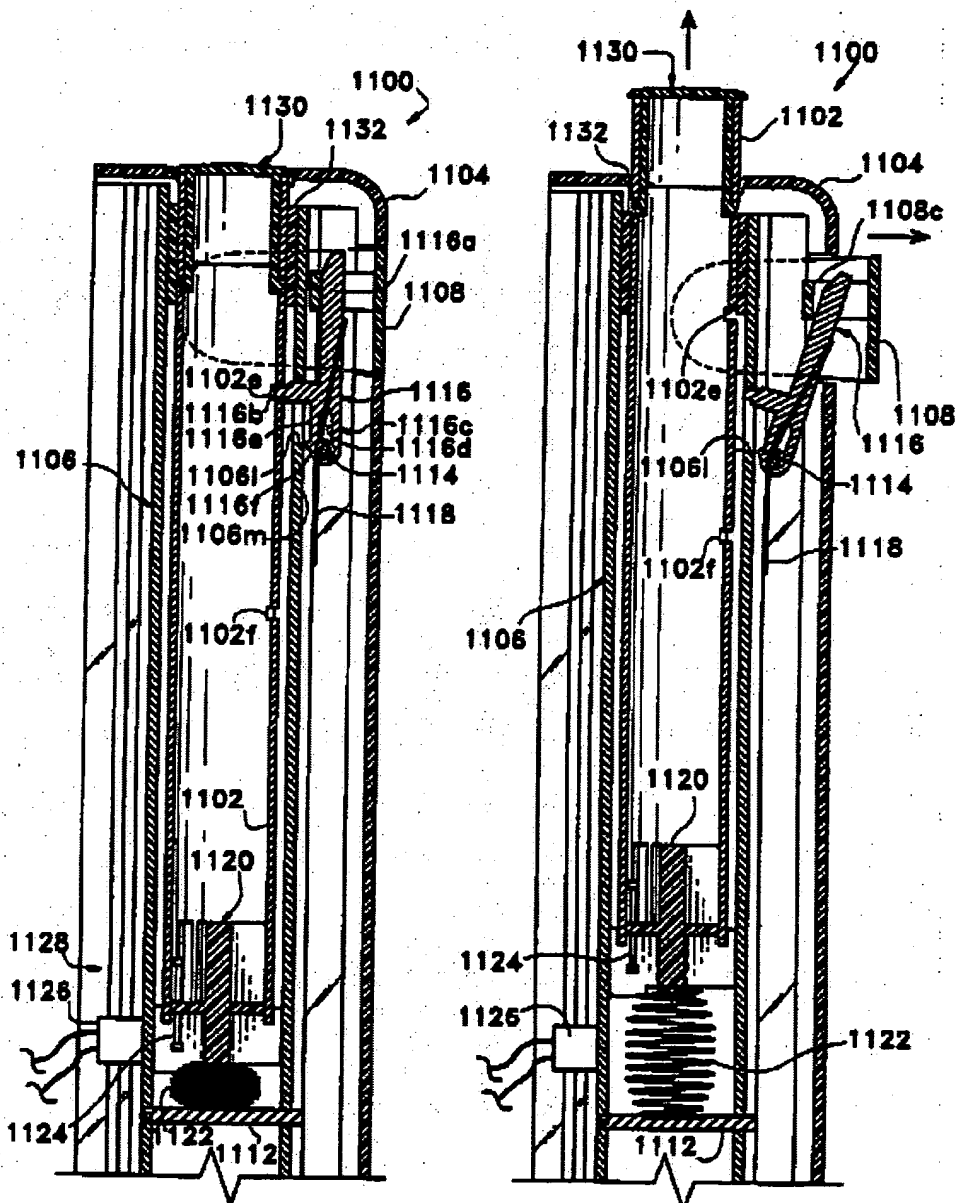


Fig. 81


Fig. 82

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley H. Duckworth whose telephone number is 571-272-2304. The examiner can normally be reached on m-f 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


BHD
11/17/06


Carl D. Friedman
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